

IN THE UNITED STATE DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

FILED

AUG 25 2006

William B. Guthrie
Clerk, U.S. District Court

By _____ Deputy Clerk

JOSHUA BELLEW,

Plaintiff,

vs.

NORTHEASTERN STATE UNIVERSITY
and THE BOARD OF REGENTS OF
OKLAHOMA COLLEGES,

Defendants.

Case No. CIV-06-307-RAW

ANSWER

COMES NOW THE DEFENDANTS, Northeastern Oklahoma State University ("NSU"), by and through Kevin L. McClure, Assistant Attorney General for the State of Oklahoma, to file the following Answer to Plaintiff's Complaint:

1. Defendants would admit Plaintiff's allegations contained in his Complaint in paragraphs numbered 1, 2, 4, and 5.
2. Defendants would deny Plaintiff's allegations contained in his Complaint in paragraphs numbered 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, and 51 and also deny Plaintiff's allegations in his "PRAYER FOR RELIEF" numbered 1, 2, 3, 4, 5, 6.
3. In addition, Defendants deny Plaintiff is entitled to a jury of no less than 12 persons.

AFFIRMATIVE DEFENSES

1. Lack of jurisdiction over the subject matter.
2. Plaintiff's Complaint fails to state a claim upon which relief can be granted.
3. Statute of Limitations.

4. Plaintiff has failed to comply with the Oklahoma Governmental Torts Claims Act with respect to his State law claims.

5. Sovereign immunity as reserved under the Tenth and Eleventh Amendments of the United States Constitution.

6. Qualified Immunity as well as any other immunity, privilege, or reservation of rights.

7. Plaintiff failed to exhaust his University and State administrative remedies.

8. Plaintiff has failed to properly comply with all necessary pre-litigation requirements necessary under Title VII and the Oklahoma Anti-discrimination Act.

9. Defendants would have taken the action they took towards Plaintiff anyway, irrespective of Plaintiff's allegedly protected activity.

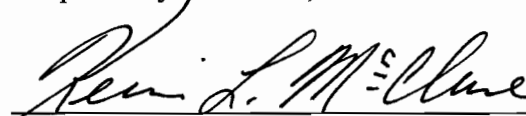
10. Lack of causation between Plaintiff's protected activity and his adverse employment action.

11. Sovereign immunity as to the State of Oklahoma. Specifically, but not limited to all defenses pursuant to 51 O.S. § 151 *et seq.*, including but not limited to:

- a. no notice given to the State pursuant to 51 O.S. § 156 within 1 year of the alleged incident;
- b. Plaintiff's Petition was not filed within 180 days after her claim was denied by the State pursuant to 51 O.S. § 157;
- c. the State can only be liable for a specific amount per person and per incident (limits of liability) pursuant to 51 O.S. § 154;
- d. the State is immune for discretionary functions pursuant to 51 O.S. § 155(5);

- e. the State is immune for actions in which it is enforcing state law pursuant to 51 O.S. § 155(3) & (4);
 - f. no punitive damages are allowed against the State pursuant to 51 O.S. § 154(C).
 - g. To the extent that Defendants employees were acting in “bad faith” or “outside the scope of their employment”, the State cannot be held liable.
- 12. Res judicata, collateral estoppel, and/or issue preclusion.
 - 13. Waiver, estoppel, unclean hands, laches, and any other equitable defense that may arise in the course of discovery.
 - 14. Plaintiff has failed to properly mitigate his damages.
 - 15. Plaintiff’s damages are statutorily limited.
 - 16. Defendants are entitled to collateral source offsets to Plaintiff’s damages.
 - 17. Any other matter constituting an avoidance or affirmative defense.
 - 18. The State of Oklahoma and Defendants reserve the right to assert any additional affirmative defenses which may be discovered during the course of this action.

Respectfully submitted,




KEVIN L. McCLURE, OBA #12767

Assistant Attorney General
Oklahoma Attorney General’s Office
Litigation Section
4545 North Lincoln Blvd., Suite 260
Oklahoma City, Oklahoma 73105-3498
Tele: (405) 521-4274 Fax: (405) 528-1867
Kevin_McClure@oag.state.ok.us
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of August, 2006, a true and correct copy of the foregoing document was mailed, postage prepaid, to:

James J. Robertson
Richard S. Toon
Toon & Osmond, P.L.L.C.
1800 S. Baltimore, Suite 1000
Tulsa, Oklahoma 74119
Attorneys for Plaintiff


Kevin L. McClure